PREPROPOSAL STATEMENT OF INQUIRY
(RCW 34.05.310)

CR-101 (7/23/95)

Do **NOT** use for expedited repeal

Agency: Public Disclosure Commission

Subject of possible rule making:

WAC 390-16-311 Automatically Affiliated Entities Maintaining Separate Contribution Limits.

(a) Statutes authorizing the agency to adopt rules on this subject:

RCW 42.17.370(1)

(b) Reasons why rules on this subject may be needed and what they might accomplish:

The Public Disclosure Commission has received a Petition for Adoption, Amendment, or Repeal of a State Administrative Rule under RCW 34.05.330.

WAC 390-16-311 outlines the circumstances under which automatically affiliated entities maintain separate contribution limits imposed by RCW 42.17.640.

The petitioner believes this rule should be repealed because it is not clear, the agency has no authority to make this rule and it conflicts with RCW 42.17.660. A copy of the rule making petition is available at www.pdc.wa.gov under "Rule Making Activity."

(c) Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: None

(d) Process for developing new rule (check all that apply):

- ☐ Negotiated rule making
- ☐ Pilot rule making
- ☐ Agency study
- ☒ Other (describe) At its meeting on February 27, 2001, the Commission is expected to discuss whether to move forward with the petitioner's suggestion to repeal WAC 390-16-311. Public comment will be welcome at this meeting. Interested persons are invited to submit written comments by February 26, 2001 to Doug Ellis, PDC, PO Box 40908, Olympia, WA 98504-0908. Written comments received by Monday, February 19, 2001, will be provided to Commissioners in advance of the meeting.

(e) How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:

(List names, addresses, telephone, fax numbers of persons to contact; describe meetings, other exchanges of information, etc.)

Contact the PDC Director of Public Outreach Doug Ellis at:

WA ST Public Disclosure Commission
PO Box 40908
Olympia, WA 98504-0908
(360) 664-2735 (telephone)
1-877-601-2828 (toll free)
dellis@pdc.wa.gov (e-mail)

A public hearing on this matter may occur on April 24, 2001.

NAME (TYPE OR PRINT)
Vicki Rippie

SIGNATURE Vicki Rippie

TITLE
Executive Director

DATE 1/16/01

CODE REVISER USE ONLY

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Public Disclosure Commissio

PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF A STATE ADMINISTRATIVE RULE (RCW 34.05.330)

The Office of Financial Management (OFM) has adopted this form for members of the public who wish to petition a state agency to adopt, amend, or repeal an administrative rule (regulation). Full consideration will be given to a petitioner's request.

To obtain this form in an alternate format, call OFM at (360) 753-2856 or TTY (360) 664-9437.

Please complete the following:

PETITIONER'S NAME (PLEASE PRINT)		TELEPHONE NUMBER (INCLUDE AREA CODE)		
Robert M. Edelman		(360) 886-7166		
STREET ADDRESS	PO BOX NUMBER	CITY	STATE	ZIP CODE
29871 232nd Ave SE		Black Diamond	WA	98010

AGENCY RESPONSIBLE FOR ADMINISTERING THE RULE, IF KNOWN
Public Disclosure Commission | If unknown, call (360) 753-7470 for mailing information.

Please submit completed and signed form to the "Rules Coordinator" at the appropriate state agency. The agency will contact you within 60 days.

Check all that apply below and explain on the back of this form with examples. Whenever possible, attach suggested language. You may attach other pages, if needed.

☐ (1) NEW: I am requesting that a new WAC be developed.

I believe a new rule should be developed.

☐ The subject of this rule is:
☐ The rule will affect the following people:
☐ The need for the rule is:

☐ (2) AMEND: I am requesting a change to existing WAC _____

☒ (3) REPEAL: I am requesting existing WAC 390-16-311 be removed.

I believe this rule should be changed or repealed because (check one or more):

☐ It does not do what it was intended to do.
☐ It imposes unreasonable costs.
☐ It is applied differently to public and private parties.
☒ It is not clear.
☐ It is no longer needed.
☒ It is not authorized. The agency has no authority to make this rule.
☒ It conflicts with another federal, state, or local law or rule. Please list number of the conflicting law or rule, if known: RCW 42.17.660

☐ It duplicates another federal, state or local law or rule. Please list number of the duplicate law or rule, if known:

☒ Other (please explain):

See Attached

PETITIONER'S SIGNATURE _____ DATE Dec 7, 2000

OFM 01

Attachment to Petition for Repeal of WAC 390-16-311
Reasons for Repeal

Introduction

The people of Washington State gave overwhelming approval to Initiative 134 *Fair Campaign Practices Act* in 1992. One of the major objectives of the initiative was to reduce the political influence of large organizational contributors by limiting their campaign contributions. Section 6 of I-134 helped accomplish that objective by requiring that entire organizations be limited to single contribution limits. The single contribution limits also included all PACs and persons under the control of these organizations. Section 6 was codified as RCW 42.17.660.

An administrative rule, WAC 390-16-311, illegally amended the statute in 1994 by adding an exception. The exception allows local units of an organization to have their own separate contribution limits for a candidate as long as higher levels of the organization do not participate in the candidate's election. This unauthorized rule has allowed large organizational contributors to continue to have a disproportionate influence on elections and must be repealed.

The problem is exemplified by the Laborers' International Union of North America (LIUNA). The twelve locals in Washington State have been allowed to maintain their own contribution limits because their District Council and International Union do not participate in candidate elections. As a result, during 1996 through 1998 the union contributed over $237,000 in excess of what they would have been able to contribute without the unauthorized exception.[1]

The following sections detail why WAC 390-16-311 must be repealed:

1. RCW 42.17.660(2) requires controlled entity contributions be attributed to a single entity;
2. WAC 390-16-311 amended the statute in an arbitrary and capricious manner by adding an exception to the single entity requirement with no statutory foundation;
3. Federal law governing similar federal provisions does not allow each controlled entity to maintain a separate contribution limit;
4. WAC 390-16-311 grants exceptions to selected organizations without authority; and
5. Large organizational contributors continue to have a disproportionate influence on elections because WAC 390-16-311 illegally permits multiple local units to have separate contribution limits

[1] A complaint was filed with the PDC detailing LIUNA contributions on January 5, 1999. PDC Case #99-070.

1. RCW 42.17.660(2) requires controlled entity contributions be attributed to a single entity

RCW 42.17.660(2) *Attribution of contributions by controlled entities* provides:

> Two or more entities are treated as a single entity if one of the two or more entities is a subsidiary, branch, or department of a corporation or a local unit, branch, or affiliate of a trade association, labor union, or collective bargaining association. All contributions made by a person or political committee whose contribution or expenditure activity is financed, maintained, or controlled by a trade association, labor union, collective bargaining organization, or the local unit of a trade association, labor union, or collective bargaining organization are considered made by the same person or entity.

The first sentence of the statute unambiguously requires that each specified type of entity combined with its subordinates be treated as a single entity. As a single entity it has a single contribution limit. The second sentence provides that entities that are not already *per se* affiliates will be treated as a single entity if organizations that are otherwise independent are, in fact, controlled by another. The statute determines this second type of affiliation by looking at finances, maintenance, and control. Contributions by persons or PACs that are financed, maintained or controlled by specified types of entities are attributed to those entities. The requirement in the first sentence depends on organizational relationships and is unconditional. The requirement in the second sentence is dependent on the facts and circumstances surrounding the financing, maintenance, and control of persons and PACs. Together the two sentences require aggregation of contributions made by controlling and controlled entities.

The implementing rule, WAC 390-16-309 *Identification of Affiliated Entities*, provides:

> (1) Two or more entities are treated as a single person and share one contribution limit under RCW 42.17.640 if one of the entities is:
>
> (a) A corporation and the other is a subsidiary, branch or division of the Corporation;
>
> (b) A national or international labor union, or state body of such national or international labor union, and the other is a local union or other subordinate organization of such national or international labor union or state body;
>
> (c) A trade association or state body of such trade association and the other is a branch or local unit of such trade association;
>
> (d) A national or state collective bargaining organization and the other is a branch or local unit of such national or state collective bargaining organization;
>
> (e) A national or international federation of labor unions, or a state federation of labor unions, and the other is a local body of such federation;

(f) A membership organization and the other is a local unit or branch of such membership organization;

(g) Any entity referenced in (a) through (f) above and a political committee established, financed, maintained or controlled by that entity.

(2) For purposes of RCW 42.17.640, two entities shall not be treated as a single entity solely because one of the entities is a dues paying member of the other entity.

(3) In addition to paragraph (1) above, two or more entities shall be treated as one entity and share a contribution limit under RCW 42.17.640 if one of the entities is established, financed, maintained or controlled by the other, as evidenced by any one of the following factors:

(a) Whether one entity owns a controlling interest in the voting stock or securities of another entity; or

(b) Whether one entity has authority or the ability to direct or participate, other than through a vote as a member, in the governance of another entity through provisions of constitution, bylaws, contract or other formal or informal procedure or has authority or the ability to hire, appoint, demote or otherwise control, other than through a vote as a member, the officers or other decision making employees or members of another entity; or

(c) Whether (i) one entity has a common or overlapping membership with another which indicates either a formal or ongoing relationship between the two organizations or the creation of a successor entity and (ii) the entity has an active or significant role in the formation of the other entity and (iii) the entities have similar patterns of contributions or contributors which indicate a formal or ongoing relationship between the entities; or

(d) Whether one entity provides, causes or arranges, funds, services or goods in a significant amount or on an ongoing basis, through direct or indirect means to the other entity, for less than full consideration. Full consideration includes the payment of membership dues.

The single entity requirement of the first sentence of RCW 42.17.660(2) is reflected in subsection (1) of the rule. The separate facts and circumstances requirement of the second sentence of the statute is reflected in subsection (3).

WAC 390-16-309(1) properly interprets the single entity requirement of RCW 42.17.660(2), concluding that parent organizations (corporations, trade associations, labor unions, and collective bargaining associations) and subordinate organizations (subsidiaries, branches, departments, local units, and affiliates) are treated as a single person (entity) and share a single contribution limit. The phrase "or more" in RCW 42.17.660(2) is properly interpreted by WAC 390-16-310(6) as referring to other controlled entities so that those contributions must also be aggregated with the single entity's contributions. This rule provides:

The limitations on contributions shall apply separately to the contributions made by an entity (corporation, subsidiary or branch, national union and local unions, collective bargaining

organizations and local units, membership organizations and local units and other organizations and their local units) pursuant to the standards set forth in WAC 390-16-309.

The legislative history of RCW 42.17.660 supports the interpretation that contributions by controlled entities are to be attributed to the controlling entity. Initiative 134 was an initiative to the Legislature that subsequently was adopted by the people of Washington State with over 72% approval. Section 6 of I-134 was codified as RCW 42.17.660. An analysis of HI 134 by the House State Government Committee dated January 24, 1992, describes the intent of Section 6 stating, "Special rules are established for... determining when a contribution by one entity is to be counted as a contribution by a controlling entity."

The single entity attribution requirement is illustrated in Figure 1 with a simplified example. The example is composed of an International Union, one of its District Councils that serves Washington State (and possibly other states), and two of its Washington State locals. Under RCW 42.17.660(2), contributions by any of these four organizations would be attributed to a single entity and that single entity would be subject to the contribution limit requirements of RCW 42.17.640. The requirement could also be illustrated by substituting "Corporation" for "International Union", "Branch" for "District Council", and "Division" for "Local".

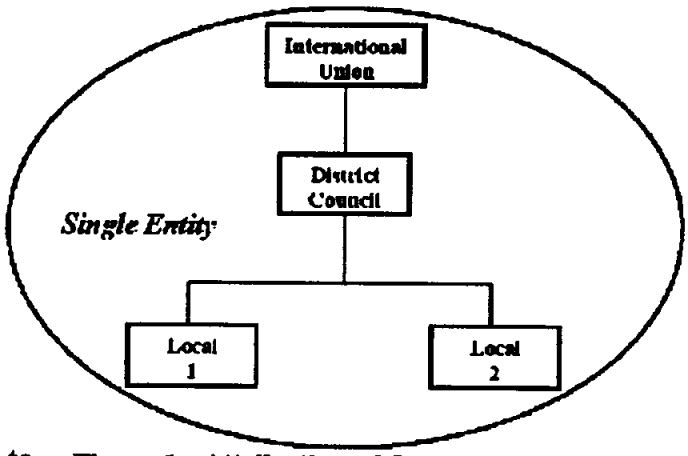

Figure 1 - Attribution of Controlled Entity Contributions to Single Entity

The reason for aggregating contributions in this manner was expressed in *Findings and Intent* of Initiative 134. Part I, Section 1 stated, "The financial strength of certain individuals or organizations should not permit them to exercise a disproportionate or controlling influence on the election of candidates." Section 2 stated, "By limiting campaign contributions, the people intend to: (1) Ensure that individuals and interest groups have fair and equal opportunity to influence elective and governmental processes; (2) Reduce the influence of large organizational contributors; and (3) Restore public trust in governmental institutions and the electoral process."

The Public Disclosure Commission held hearings on WAC 390-16-309 and WAC 390-16-311 in 1993 and 1994.[2] James Oswald, representing the Washington State Labor Council, argued that RCW 42.17.660(2) requires aggregation of contributions made by two entities, "but it contemplates that one of them is a local unit and one of them is something other than a local unit." Thus, he argued, there is no requirement to aggregate contributions from local units.[3] Such an interpretation requires that the phrase "or more" in the statute either be ignored or interpreted to mean other superior organizations. In either case, this interpretation would lead to the absurd result that each combination of superior and subordinate would be a separate, unique single entity. This is illustrated in Figure 2 using the simplified union example. Under the interpretation that each combination is treated as a separate entity, the four organizations in this example create five entities, each with its own contribution limit. Such proliferation is, of course, in direct conflict with the intent of Initiative 134. This interpretation would also conflict with WAC 390-16-308 and WAC 390-16-310.

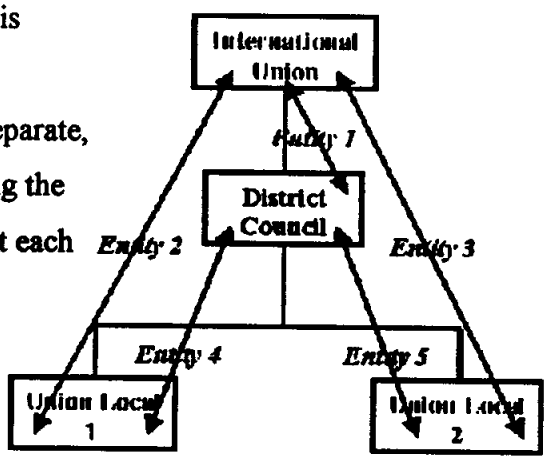

Figure 2 - Attribution of Controlled Entity Contributions in Pairs

The language of WAC 390-16-309 might be misconstrued in the manner described above because of syntax errors, thereby leading to the same absurd conclusion that every combination of a superior and subordinate organization creates a separate and unique entity. The syntax errors are shown with the following extract:

> Two or more entities are treated as a single person and share one contribution limit under RCW 42.17.640 if one of the entities is: (a) A corporation and the other is a subsidiary, branch or division of the Corporation;

Paragraph (a) describes the "two or more" entities in terms of only two entities, as do other paragraphs in the rule. To prevent potential misunderstandings, a companion petition for revision

[2] Recordings of hearings were provided by the PDC and a transcript was prepared. Statements made during hearings and quoted in this document are referenced to that transcript.
[3] James Oswald from transcript of Public Disclosure Meeting, October 26, 1993.

to WAC 390-16-309 has been submitted to clarify that a controlling entity and all of its subordinates are to be treated as a single entity.

2. WAC 390-16-311 amended RCW 42.17.660 in an arbitrary and capricious manner by adding an exception to the single entity requirement with no statutory foundation

WAC 390-16-311 *Automatically affiliated entities maintaining separate contribution limits* as currently adopted by the Commission conflicts with the explicit statutory language of RCW 42.17.660 *Attribution of contributions by controlled entities* and illegally amends the statute.

WAC 390-16-311 amended the statute by creating an exception. It provides in part:

> (1) If two or more entities are affiliated pursuant to WAC 390-16-309(1), the parent corporation, national or international labor union or state body of such national or international labor union, trade association or state body of such trade association, national or state collective bargaining organization or national or state membership organization (hereinafter called the parent or umbrella organization) automatically shares a single contribution limit with each of its subsidiary corporations, corporate branches or departments or with each of its local units. **However, absent satisfying one of the affiliation factors set forth in WAC 390-16-309(3), a subsidiary corporation or local unit shall maintain its own contribution limit if the parent or umbrella organization does not participate in an election campaign with respect to a candidate defined in RCW 42.17.630(3). *****
> (2) If the parent or umbrella organization participates in an election campaign, a subsidiary corporation or local unit, which shares a contribution limit with the parent or umbrella organization pursuant to WAC 390-16-309(1), may nevertheless contribute to any candidate regarding whom the parent or umbrella organization has not engaged in any of the activities set forth in subsection (1) of this section up to the contribution limits set forth in RCW 42.17.640. [Emphasis added]

The single entity requirement in the first sentence of RCW 42.17.660(2) is unconditional and permits no such exception. The exception was created without any statutory basis or authority.

James Oswald, representing the Washington State Labor Council, introduced the concept of an exception to aggregating contributions of local units to the PDC Commissioners during a special meeting of the PDC on August 23, 1993:[4]

> Mr. Oswald: The second point I would make is I think the concern that the Federal law addresses, and it's clear from the legislative history and the cases, is the vertical proliferation of political action committees. In other words, that they had a Federal PAC and they have a

[4] Transcript of Public Disclosure Meeting, August 23, 1993.

state PAC and then they have dozens of local PACs and they're trying to get around a contribution limit. And I assume the regulation speaks to the same thing and if it does then it's not a major problem. And that is, it seems to me that this regulation would be triggered appropriately if the entity on the state level, assuming a mandatory state organization, were in fact active in political activities so that that senior organization would have its activity attributed to a junior organization or the local. But if the state organization is not active politically, is not making contributions, I assume that the regulations would not then attribute two locals of that same international acting independently one to the other. That we're talking vertical proliferation, not horizontal proliferation. Can I get some clarification on that? My concern is that if you have a state council that is not active politically – that does not make contributions – I read this regulation to not implicate two locals of an international if they do not have a state body that is active in any way.

Assistant Attorney General Roselyn Marcus: Correct.

Mr. Oswald: So if there's no state body that's making contributions, two locals of that international would be free to make a $500 contribution to a House of Representatives race.

Information Services Director Vicki Rippie: Ro and I disagree on that. I think that's a question for the Commission to answer. That they have to look at this language here and decide whether in fact the automatic... When it just is a local unit or branch of a trade association, whether its existence is enough or, if in fact, whether the state council has to be active. Because if all you have to do is have the state council be inactive and then fifty local units get to give individual contributions, the Commission has to decide that.

Mr. Oswald's testimony incorrectly characterized Federal election law as referring only to "vertical" proliferation of political action committees. (Federal law is discussed below in Section 3.) This may have influenced subsequent actions of the Commission. However, the Commissioners recognized in August that the single entity requirement in the first sentence of RCW 42.17.660(2) is without exceptions. This was demonstrated in an exchange that took place later in the meeting. The exchange was during testimony by Nancy Kennedy from the American Federation of Teachers (emphasis added):

Commissioner Kimura: I wanted to make a comment and that was in re-reading this and looking at the statute itself, it seems to me that if you have a local unit of a labor organization we have to attribute the contributions to that one organization and that the definitions we're talking about under (3) [of draft rule -309] are only those that don't fit under the category of local. And so for your purposes, if what you're talking about are the... And you're trying to say that these local organizations are independent and have their own independent minds. That has no bearing on what we do because by definition of the statute itself. And we can't change that. **As long as your local units are considered local units of the parent organization, we have to treat those local units as coming under the same contribution limit as the main organization.** I think that the problem that you seem to have as does the

other people that have testified here today is that you're asking us to redefine the rules or the statute and we can't do that.

Ms. Kennedy: No. What I understood, and maybe I misunderstood something that was said at the get-go, was that under (1) that there was no autonomy. That that was the criteria that was applied there was that these were things that were truly joined at the hip and there was not autonomy.

Commissioner Heninger: No. Read what it says under (1)(a) and (b).

Ms. Kennedy: I've read it several times today.

Commissioner Kimura: These WACs are simply defining the initiative. The language of the initiative says – and this is the section that we're defining by these WACs – the language of the initiative says, "Two or more entities are treated as a single entity if one of the two or more entities is a subsidiary, branch, department of a corporation or a local unit, branch, or affiliate of a trade organization, or labor union, or collective bargaining association." **So by definition of the statute, the language that we have to abide by is to simply look at whether your local organizations are the local unit of your main trade association or labor union and if so we stop there.** It's only the question of "Well is this also an affiliate?" that we're trying to define here and that's where I think...

Ms. Kennedy: Okay. But our locals are affiliated with the state federation.

Commissioner Kimura: But if they are also locals of the main trade or labor organization then I think that this statute tells us we have to treat them as having one contribution limit.

Ms. Kennedy: Okay. Then I'm not understanding what the difference between a local unit and an affiliated unit is.

Commissioner Kimura: I think that there can be affiliates that are not local units. And that's what we're trying to define by section (c) [sic] is those affiliates that are not local units.

Ms. Kennedy: Okay. So a local union who has its own treasury, reports to the IRS, has complete local autonomy, but the only connection that it truly has with the American Federation of Teachers is that it must pay per capita, then they are to be treated as one unit? Is that what I'm understanding you to say?

Commissioners Kimura and Heninger in unison: **That's what the statute says.**

Subsequent to the August 23, 1993 meeting, the Commission began to have hearings on an exception to the statute. This exception became WAC 390-16-311. How this exception could be construed from the statute is not apparent from the transcript of the Commission meetings or correspondence provided by the PDC. However, comments made during hearings indicated

considerable union dissatisfaction with the requirement of Initiative 134 to aggregate contributions of large organizations. In addition, statements made by the PDC Counsel, Assistant Attorney General Marcus, seemed to indicate a willingness to achieve a result contrary to the law.

> The discussion was if the state organization stays out of the election and the locals all keep their limit. And everybody seems to be very up in arms about that. But it seemed to be contrary to the provision in 134 that you're automatically affiliated and it doesn't matter if the state organization stays out or not. On the other hand... it just didn't seem fair or logical that if the organizations were separate independent entities and the state had stayed out of the race that the locals, which each had their own geographic areas and their own concerns, shouldn't be allowed to participate in the process to their fullest extent. [5]

Despite the clear intent and unambiguous language of the statute, an exception was written that negates the requirements of RCW 42.17.660(2) if the parent organization does not participate in the election. This is depicted in Figure 3. In the simplified example, if the International Union and the District Council stayed out of the election then Local 1 and Local 2 would maintain separate contribution limits under WAC 390-16-311 and the other organizations would not be treated as part of any entity. However, if the International contributed to a candidate then the rule would revert to Figure 1, but only for that candidate.

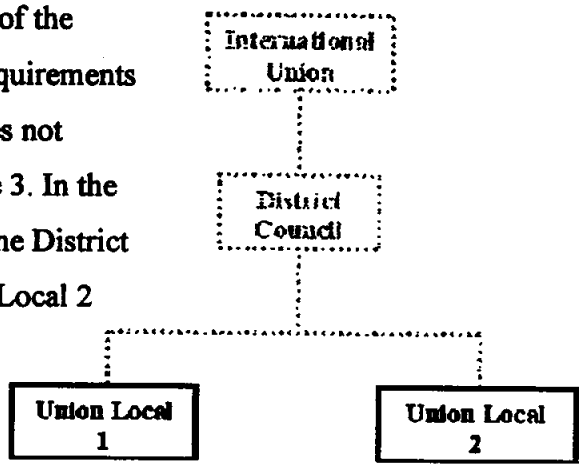

Figure 3 - No Attribution of Controlled Entity Contributions

The requirements imposed by RCW 42.17.660(2) are not conditional on the participation of the controlling entity. Therefore the statute requires that all affiliated entities be treated as a single entity and share a single contribution limit even if only one controlled or one controlling entity participates in the election. No other rational construction of the statute can be made.

[5] Transcript of Public Disclosure Commission Meeting, February 22, 1994.

3. Federal law governing similar federal provisions does not allow each controlled entity to maintain a separate contribution limit

Federal law requires the aggregation of contributions by controlled entities in Federal elections and has no exception when the controlling entity stays out of an election.

The Federal code comparable to RCW 42.17.660(2), 2 USC 441a(a)(5), includes the following:

> For purposes of the limitations provided by paragraph (1) and paragraph (2), all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons, shall be considered to have been made by a single political committee ...[6]

The two sentences of RCW 42.17.660(2) are repeated here for comparison:

> Two or more entities are treated as a single entity if one of the two or more entities is a subsidiary, branch, or department of a corporation or a local unit, branch, or affiliate of a trade association, labor union, or collective bargaining association.
>
> All contributions made by a person or political committee whose contribution or expenditure activity is financed, maintained, or controlled by a trade association, labor union, collective bargaining organization, or the local unit of a trade association, labor union, or collective bargaining organization are considered made by the same person or entity.

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[6] 2 USC 441a(a)(5) provides:
For purposes of the limitations provided by paragraph (1) and paragraph (2), all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons, shall be considered to have been made by a single political committee, except that (A) nothing in this sentence shall limit transfers between political committees of funds raised through joint fund raising efforts; (B) for purposes of the limitations provided by paragraph (1) and paragraph (2) all contributions made by a single political committee established or financed or maintained or controlled by a national committee of a political party and by a single political committee established or financed or maintained or controlled by the State committee of a political party shall not be considered to have been made by a single political committee; and (C) nothing in this section shall limit the transfer of funds between the principal campaign committee of a candidate seeking nomination or election to a Federal office and the principal campaign committee of that candidate for nomination or election to another Federal office if (i) such transfer is not made when the candidate is actively seeking nomination or election to both such offices; (ii) the limitations contained in this Act on contributions by persons are not exceeded by such transfer; and (iii) the candidate has not elected to receive any funds under chapter 95 or chapter 96 of title 26. In any case in which a corporation and any of its subsidiaries, branches, divisions, departments, or local units, or a labor organization and any of its subsidiaries, branches, divisions, departments, or local units establish or finance or maintain or control more than one separate segregated fund, all such separate segregated funds shall be treated as a single separate segregated fund for purposes of the limitations provided by paragraph (1) and paragraph (2).

The first sentence of RCW 42.17.660 combines controlled entities with their controlling entity into a single entity for purposes of contribution limits. The second sentence addresses PACs or persons subordinate to the entities referred to in the first sentence excluding corporate entities. This second sentence is very similar to the Federal statute and was probably patterned after it. The major differences appear to be a result of the fact that corporations and unions are allowed to contribute to Washington State elections but not to Federal elections.

Both the state and the federal statutes require aggregation of contributions by controlled entities under a single contributions limit.[7] But there is no exception in federal law comparable to the one created by WAC 309-16-311. A decision by the Court of Appeals for the Ninth Circuit in *FEC v. Sailors' Union of the Pacific Political Fund* has been cited to show that a federal court rejected the idea of horizontal aggregation based on *per se* affiliation with a common international union.[8] The contrary is true. The Court examined the relationship between the Seafarers' International Union and its member unions and judged that it was more like an association of independent unions like the AFL-CIO then a traditional union. The Court found that "To say the least, Seafarers is organizationally distinctive." Thus the rule requiring aggregation of local union contributions did not apply to this specific and unusual organization structure. However, the decision confirmed the legislative intent to aggregate the contributions of individual locals of an international union.

> Various comments in the records of both the House and Senate suggest that through the operations of section 441a(a)(5) Congress intended to aggregate campaign contributions of locals of international unions but did not intend to aggregate contributions of member unions of labor federations.[9]

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[7] The implementing Federal Election Commission regulation is 11 CFR 100.5(g)(3) which provides:
Affiliated committees sharing a single contribution limitation under paragraph (g)(2) of this section include all of the committees established, financed, maintained or controlled by
(i) A single corporation and/or its subsidiaries;
(ii) A single national or international union and/or its local unions or other subordinate organizations;
(iii) An organization of national or international unions and/or all its State and local central bodies;
(iv) A membership organization, (other than political party committees, see 11 CFR 110.3(b)) including trade or professional associations, see 11 CFR 114.8(a), and/or related State and local entities of that organization or group; or
(v) The same person or group of persons

[8] Ed Younglove at Public Disclosure Meeting, October 26, 1993.

[9] 828 F.2d 502

In fact, the only known federal exception to aggregation of union local contributions in Washington State is the Seafarers' International Union.

The Laborers' International Union of North America (LIUNA) is an example of a traditional union that controls its subordinate councils and locals. Extracts from its constitution previously submitted to the PDC show that the control exercised by this typical union is extensive.[10] LIUNA is required by the FEC to aggregate its PAC contributions for Federal Elections. By contrast, the exception created by WAC 390-16-311 has allowed LIUNA locals to have individual contribution limits.

Corporations and unions have been required to aggregate their individual PAC contributions PACs in Federal elections since the Federal Elections Campaign Act was passed in 1971. The federal model shows that aggregation when the controlling entity stays out of an election is fair, reasonable, constitutional and logical.

4. WAC 390-16-311 grants exceptions to selected organizations without authority

WAC 390-16-311 allows some controlled organizations to maintain separate contribution limits while excluding others. There is no justification for this selective and illegal application.

The second sentence of WAC 390-16-311 states, "However, absent satisfying one of the affiliation factors set forth in WAC 390-16-309(3), a subsidiary corporation or local unit shall maintain its own contribution limit if the parent or umbrella organization does not participate in an election campaign..." The PDC maintains that the reference to WAC 390-16-309(3) in this context applies only to a local unit that is financed, maintained, or controlled by another local unit.[11] Thus the exception does not apply to local units if a horizontally controlling local unit

[10] Attachment 1 to letter dated January 5,1999 from Robert M. Edelman to the Public Disclosure Commission, "Over-limit Contributions by the Laborers' International Union of North America and its State Affiliates". PDC Case #99-070.

[11] In partial response to a complaint concerning the single entity requirement, the PDC replied: "WAC 390-16-309(3), which you rely on as the definitive test for affiliation, is to be used when there is no 'automatic' affiliation found under subsection (1). As referenced in WAC 390-16-311, WAC 390-16-309(3) is also the means for determining when one local unit finances, maintains or controls another local unit and, therefore,

stays out of the election. There is nothing in the record that indicates why this exception to the exception was introduced into the rule.

The exception is also arbitrarily restricted to "subsidiary corporations" and "local units". Nothing in the record reveals why branches and departments of corporations, and branches and affiliates of trade associations, labor unions, and collective bargaining associations are excluded.

5. Large organizational contributors continue to have a disproportionate influence on elections because WAC 390-16-311 illegally permits multiple local units to have separate contribution limits

The exception to RCW 42.17.660 created by WAC 390-16-311 has resulted in large amounts of money being donated to individual candidates that would otherwise be prohibited as over-limit contributions. In the 1998 election, the most significant of these was LIUNA, which contributed approximately $165,000 in excess of what otherwise would have been permitted.[12] There were nineteen instances where nine or more locals of LIUNA contributed to the same candidate on the same day.[13] In one instance, eleven locals contributed exactly $250 each to a single candidate on December 1, 1997.[14] There can be little doubt that candidates give credit to a single union for these contributions even though they arrive in separate checks. This is exactly the type of large organization political influence that I-134 intended to end.

One state legislative candidate received more than $12,000 from separate LIUNA locals for the 1998 election. Allowing local units of a parent entity to make large non-aggregated contributions of this magnitude subverts the expressed intent of Initiative 134 to "reduce the influence of large organizational contributors" by limiting their campaign contributions.

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shares a contribution limit with that local unit." Letter dated February 10, 2000, from Vicki Rippie to Robert Edelman. PDC Case #99-070.

[12] Letter dated October 11, 1999 from Robert M. Edelman to the Public Disclosure Commission, "Revision 2 to LIUNA Complaint – PDC Case #99-070"

[13] Letter dated January 25, 1999, from Robert M. Edelman to Doug Ellis, "Supporting Information for LIUNA Complaint – PDC Case #99-070"

[14] C3 report dated December 3, 1997 from the Committee to Re-Elect Mike Cooper and submitted to the PDC.

Conclusion

WAC 390-16-311 amends RCW 42.17.660 without legal authority. It violates the intent of Initiative 134 by adding exceptions that have no statutory basis and are granted arbitrarily to various types of organizations. There is no similar exception in Federal law. This rule has led to excessive combined campaign contributions from the entities within large organizations contrary to the intent of Initiative 134 and must be repealed in its entirety.